

Remarks:

Claims 1, 3-6, 8-12, 14 and 16-24 are pending in the present application. Claims 1, 8 and 12 has been amended. No new matter is believed to have been added. Support for the amendments herein can be found, for example, in paragraphs 34-37 of applicants' U.S. Pat. Pub. No. 2003/0023669.

35 U.S.C. §102:

Claims 1, 3-6, 8, 10-12, 17, 18, 21 and 22 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Pat. Pub. No. 2002/0129127 to Romero et al. (hereinafter, '*Romero*'). According to the M.P.E.P. §706.02 and §2131, to establish a *prima facie* case of anticipation under §102, the prior art reference must teach or suggest every aspect of the claimed invention¹.

With regard to claim 1, as amended herein, the applicants assert that *Romero* fails to teach or suggest at least:

A method of configuring a load balancer for dispatching client requests amongst a plurality of servers, the method comprising ... obtaining the configuration files from each of the plurality of servers ... by repeating for each of the plurality of servers:

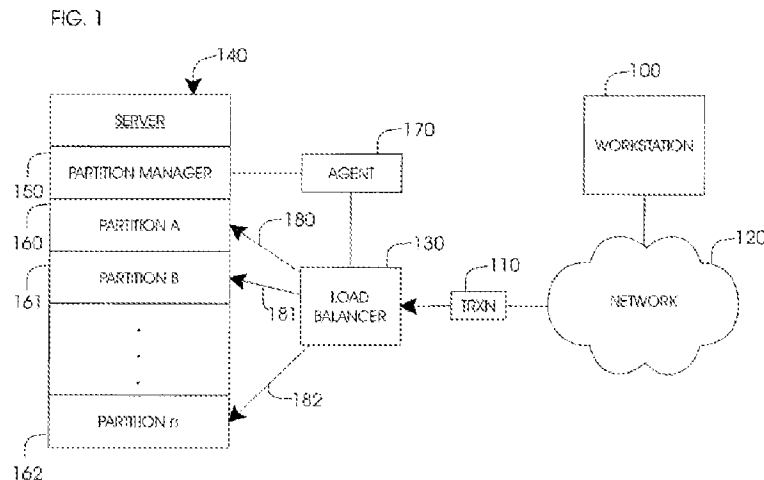
- selecting by the load balancer, a next one of the plurality of servers;
- sending a request across a corresponding network from the load balancer to the next one of the plurality of servers;
- receiving either a corresponding configuration file or an error message from the next one of the plurality of servers; and
- validating parameters in the corresponding configuration file if received; and

... configuring a load balancing algorithm by the load balancer in accordance with the parameters that were read out of each corresponding configuration file.

As best seen in Fig. 1 of *Romero*, which is reproduced below, a server 140 preferably comprises a partition manager 150 thereon for managing the resources of a plurality of partitions 160, 161, 162, e.g., software servers. An agent 170, which may reside at the load balancer 130, at the server 140, or other suitable location, interacts with the server 140 to provide the identify

¹ See *Carella v. Starlight Archery and Pro Line Co.*, 804 F.2d 135, 138, 231 U.S.P.Q. 644, 646 (Fed. Cir. 1986).

of the partitions 160-162 and the configuration thereof to the load balancer 130, which performs load balancing operations with respect to messages transactions 110 from a network 120 to the various partitions 160, 161, 162².



The partition manager 150 determines the configuration of the partitions 160-162 on the server 140 and provides the necessary configuration information to the agent 170. Alternatively, the agent 170 may obtain the configuration information from the server 140 directly, such as by probing or polling the server 140, the partition manager 150, the operating system, individual partitions, etc. to identify the partitions 160-162 and determine the configuration thereof³.

The information gathered by the agent 170 is assembled into a partition profile 300 for maintaining the configuration of the partitions 160-162 and preferably comprises a partition identification 310, a network address 320 (e.g., an IP address, port, etc.), a corresponding configuration 330, and an assigned rank 340⁴.

Romero is completely silent with regard to, and fails to teach or suggest, that the load balancer obtains configuration files from each of the plurality of servers. As will be described in greater detail below, the only disclosed file in *Romero* is a partition profile that is created by the agent 170 to assemble information for the load balancer.

² See for example, paragraph 16 and Fig. 1 of *Romero*.

³ See for example, paragraphs 29 and 31 of *Romero*.

Moreover, *Romero* fails to teach or suggest that the load balancer obtains configuration files from each of the plurality of servers... by selecting... a next one of the plurality of servers, sending a request across a corresponding network from the load balancer to the next one of the plurality of servers and receiving either a corresponding configuration file or an error message from the next one of the plurality of servers.

FIG. 3

310	320	300	330	340
PARTITION ID	NETWORK ADDRESS	PARTITION PROFILE	CORRESPONDING CONFIGURATION	ASSIGNED RANK
A	1.1.1.1	RESOURCE ALLOCATION ~ 20% RESOURCE UTILIZATION ~ 60% AVG RESPONSE TIME ~ 0.5 ms	RESOURCE ALLOCATION ~ 20% RESOURCE UTILIZATION ~ 60% AVG RESPONSE TIME ~ 0.5 ms	3
B	1.1.1.2		RESOURCE ALLOCATION ~ 50% RESOURCE UTILIZATION ~ 35% AVG RESPONSE TIME ~ 0.2 ms	1
C	1.1.1.3		RESOURCE ALLOCATION ~ 30% RESOURCE UTILIZATION ~ 40% AVG RESPONSE TIME ~ 0.3 ms	2
...
PARTITION n	1.1.1.n	CONFIGURATION n	RANK n	RANK n

Rather, the only disclosure in *Romero* is that the agent 170 obtains information by probing or polling the server, regardless of whether the agent 170 polls the partition manager 150, operating system, partitions, etc. There is no teaching or suggestion anywhere in *Romero*, that the load balancer requests a configuration file associated with each partition. Moreover, as noted above, the only disclosed configuration information in *Romero*, as seen in Fig. 3, which is reproduced below, are metrics including “Resource Allocation”, “Resource Utilization” and “Average Response Time”. These metrics are the same fields for each partition and comprise the type of information that is obtained by querying/polling for specific fields of information from the server 140.

Romero is silent with regard to, and fails to teach or suggest receiving either a configuration file or an error message in response to requesting a configuration file. Rather, as noted in greater detail above, the agent simply polls the server for desired metrics.

⁴ See for example, paragraphs 32 and 33 of *Romero*.

Correspondingly, there is no teaching or suggestion anywhere in *Romero* of validating parameters from configuration files associated with each partition. Rather, in *Romero*, the load balancer relies upon the agent 170 to poll for desired information that the agent needs to compute a ranking of partitions and to assemble metrics and other information that identify partitions to be managed by the load balancer.

Still further, *Romero* is silent with regard to, and fails to teach or suggest configuring a load balancer in accordance with the parameters read out from the corresponding configuration files. Rather, in *Romero*, the agent 170 (regardless of its location on the system) consolidates the partition address and configuration information into a single partition profile 300⁵ (seen above) that summarizes configuration information for all of the corresponding partitions of the corresponding server(s). The agent also computes a ranking 340 based upon the partition parameters⁶. Thus, the load balancer in *Romero* receives a single profile that identifies each associated server and the necessary load balancing characteristics and pre-computed ranking to perform load balancing functions.

Notably, the only file, described in *Romero* is the partition file 300. However, as noted above, the partition file is created by the agent 170 and summarizes information, including configuration information about servers handled by the load balancer. Thus, there is no teaching or suggestion in *Romero* of providing configuration files for servers to the load balancer at all.

In view of the amendments and clarifying comments herein, the applicants respectfully request that the Examiner withdraw the rejection to claim 1, and the claims that depend there from, under 35 U.S.C. §102(e).

Independent claims 10 and 12 have been amended herein to recite elements similar to that those in claim 1. As such, the arguments set out above with reference to claim 1 apply by analogy to claims 10 and 12. In view of the amendments and clarifying comments herein, the

⁵ See Fig. 3 of *Romero*.

⁶ See paragraph 33 of *Romero*.

applicants respectfully request that the Examiner withdraw the rejection to claims 10, 12, and the claims that depend there from, under 35 U.S.C. §102(e).

35 U.S.C. §103:

Claims 9, 14, 19 and 23 are rejected under 35 U.S.C. §103(a) as being obvious in view of U.S. Pat. Pub. No. 2002/0129127 to Romero et al. (hereinafter, “*Romero*”). According to the MPEP §706.02(j), to establish a *prima facie* case of obviousness, the prior art reference must teach or suggest all the claim limitations⁷.

Claims 9 and 14 depend from independent claim 1. Claim 19 depends from independent claim 10 and claim 23 depends from independent claim 12. The applicants’ respectfully assert that claims 9, 14, 19 and 23 are patentable by virtue of being dependent upon a base independent claim, which applicants believe to be patentable as set out in greater detail herein.

Conclusion:

For all of the above reasons, the applicants respectfully submit that the above claims recite allowable subject matter. The Examiner is encouraged to contact the undersigned to resolve efficiently any formal matters or to discuss any aspects of the application or of this response. Otherwise, early notification of allowable subject matter is respectfully solicited.

Respectfully submitted,

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⁷ See also, *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP § 2143 - § 2143.03